

**Remarks of Michael O’Rielly, FCC Commissioner  
Before Faegre Baker Daniels Insights Luncheon  
March 8, 2016**

Thank you, Congresswoman Bono, for those kind words and for inviting me here today.

I have been asked to discuss the FCC’s upcoming agenda, with a special focus on universal service reform. What I discuss in the next few moments will likely represent most, if not all, of the high-profile items to be considered by the Commission in the coming months. Soon, political events will create a holding pattern whereby all of Washington will await the election results and the selection of a new president. A new president will select a new Commission Chairman or Chairwoman, who will come with their own agenda, goals and outlook that may differ dramatically from the one we have today. So let’s talk about what is likely to happen and acknowledge that any issues put off to 2017 run the risk of changing significantly before completion.

A high priority for many of you in this room is to hear about and understand the components of the Commission’s effort to reform the high-cost program of the universal service fund – and more specifically changes to the rate-of-return portion. Nothing would make me happier than to share the current document and walk you through those changes. The item has been circulated to the Commissioners for their consideration and, under Commission rules, unfortunately I am prevented from discussing or revealing any non-public information, beyond indicating that I have voted. In fact, my colleague, Commissioner Pai, and I asked that the document be released to the public prior to adoption so everyone can examine its contents and analyze its impact. Sadly, we were not sufficiently convincing, and the Chairman essentially rejected the request.

Fixing the Commission’s processes and improving transparency have been key interests of mine during my time on the eighth floor. I have given speeches, written extensively on it – including a dozen blog posts – and testified in both the House and Senate seeking Congressional involvement and legislation. These efforts haven’t resulted in changes yet, but I firmly believe that the tide is turning in the overall debate. Pressure continues to build to make the Commission more accountable to the American people and ensure that items we adopt are more thoughtfully considered rather than just implementing pre-determined outcomes.

As opposed to other items, rate-of-return reform was one of the more inclusive procedural efforts that I have been part of at the Commission. At my request, a number of Commissioners worked extensively with the requisite trade associations in order to fully understand their concerns and the impact of any changes. I also travelled to a number of places around the country to hear firsthand from carriers. After almost a year of discussions, I believe we have a solid framework that provides regulatory certainty for rate-of-return carriers for years to come.

Substantively, I can say that the item will address the Commission’s antiquated rules to permit reimbursement for standalone broadband. At the same time, the Commission will require more from carriers in order to receive Federal ratepayer funds and ensure that such dollars are being wisely and efficiently spent, while providing transitions where appropriate. This means buildout requirements, an end to subsidizing areas where competition has developed, bringing carriers into industry norms on expenses, and maintaining an overall budget for total expenditures. To stay within the confines of Commission rules, any more detail is probably going to have to wait until after the item is adopted and released.

Next up on the universal service reform agenda is dealing with the various issues particular to Alaska. This should be considered and completed by the end of the second quarter of this year. While Alaska provides some unique challenges, the affected companies have presented a generally reasonable approach for consideration.

The Commission is also currently considering procedures to operate a reverse auction to award funding to providers willing to serve those price cap areas that were not selected by incumbent carriers last year. Again, I am limited as to what I can say because the item has been circulated to the Commissioners.

On a longer – and less clear – timeline, rules will have to be adopted for the remote areas fund, or RAF, refining and reforming the mobility fund, and addressing the lack of broadband availability on tribal lands. For RAF, mobility fund, and tribal lands, the Commission is going to have to be cognizant of how these efforts can overlap. Moreover, I would argue that dealing with the RAF may be the most pressing, as these areas have little to no broadband availability. Addressing the RAF may also reduce the scope of areas applicable for mobility or tribal lands funding.

As many of you know, the Commission is intending to initiate the broadcast spectrum incentive auction three weeks from today. In all fairness, this date should be considered a soft opening. That is, it is the date by which broadcasters must officially declare which of their stations are for sale and make an irrevocable commitment to accept the Commission's opening price. But then we will have a number of weeks before the reverse auction actually begins. Once started, the reverse and forward auctions are likely to go for months, and that is assuming spectrum management and the band plan doesn't need to be adjusted, which would extend it out further. I am rooting for a successful auction, but the Commission did itself no favors by injecting misguided social policy into an already complex situation.

While it hasn't been announced yet, I believe that this month's Commission meeting will include expanding the low-income universal service program (better known as Lifeline) and new broadband privacy rules. To be clear, I don't have any insider information, but I'm making an educated guess based on public comments made by various people. In regard to Lifeline, I have made clear that I'm willing to support expanding the program to cover broadband but, in return, the Commission must adopt a reasonable overall budget at the same time. That is non-negotiable. It would seem to make sense that those who follow or support the high-cost program, like rate-of-return carriers, would agree with this approach as they live within an existing budget, and a budget-less Lifeline program threatens the sustainability of all USF.

I have deep concerns about the direction the Commission may be headed on the use and analysis of data by broadband companies. In the name of "privacy," the Commission seems intent on doing great damage to the interworking of the Internet. Beyond the deeply flawed authority for privacy regulation generated from last year's net neutrality decision, which is still being challenged in the courts, the Commission doesn't understand how its new burdens will impose unnecessary and costly compliance on broadband providers. Who does the Commission think is going to pay for this? Additionally, by all measures the Commission is ill-prepared to address the complexity of privacy matters, lacking the history and necessary expertise.

Commission action in this area is even more dubious when taking into account the publicly-stated goal of advocates, which is a twofold knockout punch to the exchange of data: first, impose arcane,

unnecessary burdens on broadband networks, then push the FTC to impose different ones on edge providers that are harsher than the FTC's existing precedents. In essence, it means possible prohibitions on necessary and helpful data sharing and competing – and potentially conflicting – rules from the FCC and FTC. This combination will setback the economics and functionality of the Internet for decades. And for what benefit to consumers? Consider this: is there any doubt that the “right to be forgotten” policy imposed in Europe hinders the ability to properly manage credit and engage in debt collection? And if debt cannot be collected, overall costs increase for all borrowers.

Another issue pending at the Commission is further implementation of the Telephone Consumer Protection Act (TCPA). The Commission has the statutory obligation to implement the TCPA changes contained in the Bipartisan Budget Act of 2015 by August of this year. Given the Commission's track record on this matter, I am extremely worried that the intent of Congress – whether you agree or not – will be ignored. Instead, we should faithfully execute the provisions of the law with a recognition that Congress found it necessary to enact this provision to counter prior Commission actions. Unless Congress repeals the law, which seems like a heavy lift since it was initiated by this Administration's debt issuing agencies, the FCC doesn't get to second guess the legislative branch by purposefully misinterpreting the law.

There are other matters that the Commission will likely consider this year. I will mention them briefly, and we can discuss if anyone is interested. This list includes special access, which is the rate regulation of certain dedicated high-capacity connections; technology transitions, which is the effort to maintain old regulatory burdens and frustrate the offering of new fiber technologies under the guise of “protecting” consumers; and the Commission's efforts to open high frequency bands for new wireless technologies as part of the development of so-called “5G” technologies. In addition, I suspect that the Commission will need to dispose of the Charter-Time Warner-Bright House merger applications. Since I do not make comments regarding pending or prospective mergers, I will withhold my thoughts on that subject.

Last on the list of things to expect this year is media ownership changes. I am skeptical that the Commission will follow through on Chairman Wheeler's promise to address our requirements under the statute this June. It is certainly possible that the Commission may circulate a draft item at that time but forgive me for being pessimistic after having the rug pulled out from beneath the feet of rationality so many times. Perhaps this will be the time that the Commission does what it is supposed to do, but I won't hold my breath. It would not be surprising to see a procedural repeat of the last election-year media ownership item. In that instance, the proposed rule changes sat on circulation for quite a while and then the new FCC leadership summarily and illegally disregarded them, except for imposing additional burdens on joint sales agreements.

With that, I promised to reserve half of my time for questions and answers. I will answer as much as I possibly can for a minority member of the Commission.